

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

SHIRDENIA BRYANT, et al.,	:	Case No. 1:02cv006
	:	(Judge Spiegel)
Plaintiffs,	:	
	:	
-vs-	:	PLAINTIFFS' MEMORANDUM
	:	OPPOSING DEFENDANTS' MOTION TO
PRESCOTT BIGELOW, IV, et al.,	:	VACATE TRIAL DATE
	:	
Defendants.	:	

Defendants' Motion to Vacate Trial Date (Doc. 58), filed on December 22, is simply a desperate attempt to delay trial - to avoid the day of reckoning for their conduct. The motion papers are noteworthy in what is not disclosed to the Court.

Defendants' purported ground for their motion is a claim that the plaintiffs have failed to comply with the Magistrate Judge's order (Doc. 52), compelling discovery.¹ According to the Defendants, Plaintiff Bryant has not produced her income tax returns for years 1997-2002, and Defendant Curtis has not produced his employment résumé. Defendant suggests – but does not forthrightly state – that these documents are necessary for trial preparation.

In fact, on December 5, Shirdenia Bryant went to the IRS offices and, using a copy of the Magistrate Judge's order, obtained the official transcripts of her income tax returns for years 1997 through 2002 without the standard two-to-three-week delay. She produced these official transcripts to Defendants' counsel on December 5, squarely in compliance

¹ Overruling Plaintiff Bryant's contentions that her income tax returns were private and irrelevant to this case, on November 25, 2003, Magistrate Judge Novotny granted Defendants' motion to compel and ordered Shirdenia Bryant to produce her federal income tax returns by December 5. Plaintiffs' counsel was out of state during that (Thanksgiving) week, and returned to Cincinnati to find the order on Monday, December 1.

with the Magistrate Judge's order. The transcripts are the IRS's electronic transcription of everything on her returns: 1997 return (5 pages produced); 1998 return (3 pages produced); 1999 return (4 pages produced); 2000 return (4 pages produced); 2001 return (6 pages produced); and 2002 return (10 pages produced). The single transcript page attached to Defendants' motion is not representative of the information on the transcripts. The actual transcripts contain every item of substance on the filed returns, including W-2 information.

In a December 5 e-mail message to Defendants' counsel, Plaintiffs' counsel explained that Shirdenia Bryant had searched a storage warehouse, where she thought copies of her returns had been stored, but those copies were not there.² Defendants omit that communication from their motion papers. Simply stated, Shirdenia Bryant has not been able to find any signed version of the requested tax returns. She produced the best and official version available.

As to the Harry Curtis employment résumé, this document has been the center of confusion – confusion mentioned in the Magistrate Judge's November 25 order. During his August 29 deposition, Harry Curtis was unable to remember his exact job history, and he volunteered that his résumé could probably fill in the time sequence correctly. Defendants' counsel requested this résumé and confirmed the request by letter. Harry Curtis searched for but was not able to find it. Mr. Curtis has created a résumé and will produce it to

² Shirdenia Bryant is currently homeless. After she lost her home (as a result of the Defendants' scheme), she stored some of her personal belongings at a rented storage unit. She thought her tax return copies were at this location. She fell behind in the rent for this storage unit, and the landlord refused to grant her access until she paid up. The landlord only granted her access on December 5 when he received a copy of the Court's order. He allowed her to search for the tax return copies, which she did, but her search was unsuccessful. Her only alternative was to obtain the IRS transcripts.

Defendants' counsel by the time of the final pretrial conference. But he is not withholding documents from discovery, and he has not violated the Magistrate Judge's order.

There is no reason to delay the trial of this case. The Court's current schedule should be maintained.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on January 2, 2004, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: Gary R. Lewis, Attorney, Gary R. Lewis Co. LPA, Cincinnati Club Building, Suite 915, 30 Garfield Place, Cincinnati, Ohio 45202.

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